



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/164120

PRELIMINARY RECITALS

Pursuant to a petition filed February 21, 2015, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Waukesha County Health and Human Services in regard to FoodShare benefits (FS), a hearing was held on March 30, 2015, at Waukesha, Wisconsin.

The issue for determination is whether Petitioner's FoodShare allotment has been correctly calculated.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Rebecca Tollefson
Waukesha County Health and Human Services
514 Riverview Avenue
Waukesha, WI 53188

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Waukesha County.
2. Petitioner's FoodShare case was subject to review in early 2015 and after it was processed Petitioner's FoodShare allotment was reduced effective February 1, 2015 from \$112.00 to \$63.00.
3. Petitioner's FoodShare household consists of one person.

4. The agency determined that Petitioner's gross FoodShare household income to be \$778.00 as of January 1, 2015. This consists of Petitioner's Social Security benefit.
5. The FoodShare allotment calculation formula effective February 1, 2015 for Petitioner included the standard deduction of \$155.00. This brings Petitioner's adjust income to \$623.00. Half of this is \$311.50. As Petitioner pays rent of \$178.00 and does not pay for heat but does pay for phone and electricity so receives the standard limited utility allowance of \$321.00. Thus Petitioner's total shelter expenses are \$499.00 so has a shelter deduction of \$187.50 (499.00-311.50). There were no other deductions.

DISCUSSION

To receive FoodShare benefits a household must have income below gross and net income limits though the gross income test does not apply where a household has an elderly blind or disabled member. *7 Code of Federal Regulations (CFR), §273.9(b); FoodShare Wisconsin Handbook (FSH), § 1.1.4.* The agency must budget all income of the FS household, including all earned and unearned income. *7 CFR § 273.9(b); FoodShare Wisconsin Handbook (FSH), § 4.3.1.* The allotment calculation is based on prospectively budgeted monthly income using estimated amounts. *FSH, §4.1.1.*

The gross income limit for a household of one is \$1946. *FSH, §8.1.1.1.* Petitioner's gross income is less than this.

If a household passes the gross income test, the following deductions are applied (*FSH, at § 4.6*):

- (1) a standard deduction - which currently is \$155 per month for a household of 1-3 persons, *7 CFR § 273.9(d)(1)*;
- (2) an earned income deduction - which equals 20% of the household's total earned income, *7 CFR § 273.9(d)(2)*;
- (3) certain medical expenses – for medical expenses exceeding \$35 in a month for an elderly or disabled person, *7 CFR § 273.9(d)(3)*;
- (4) dependent care deduction for child care expenses, *7 CFR § 273.9(d)(4)*; and
- (5) shelter and utility expenses deduction – the utility expense requires that a household have an actual utility obligation and is a standard deduction based on that obligation; the deduction is equal to the excess expense above 50% of net income remaining after other deductions. *7 CFR § 273.9(d)(5).* There is a cap of \$478.00 on the shelter cost deduction unless a household has an elderly [60 or older], blind or disabled member. *FSH, §§ 4.6.7.3 and 8.1.3.*

Petitioner was represented at the hearing by her parents. They did not note any errors in the calculations described above. Rather, they indicate Petitioner needs a special diet which is more costly than a normal diet. I recognize the Petitioner's challenges; however, neither the agency nor I have equitable authority to give her more than the maximum amount that is allowed by the regulations. There is nothing in the FoodShare rules that allows the agency to consider special dietary needs. The FoodShare amounts are set solely by the formula described above. In reviewing the calculation of Petitioner's FoodShare allotment I do not find any errors in the final allotment determination. Given Petitioner's income and deductions, the correct monthly FoodShare allotment is \$63.00. *FSH, §8.1.2.*

As a final note, a reported change in income or expenses can affect the FoodShare allotment in the month following the report of the change so if any of Petitioner's financial circumstances change (as an example – medical expenses in excess of \$35.00) she should report the change as soon as possible. *FSH, §6.1.3.3.*

CONCLUSIONS OF LAW

That the available evidence is sufficient to demonstrate that the agency correctly calculated Petitioner's FoodShare at \$63.00.

THEREFORE, it is

ORDERED

That this appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 8th day of April, 2015

\sDavid D. Fleming
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on April 8, 2015.

Waukesha County Health and Human Services
Division of Health Care Access and Accountability